U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18042156

Date: SEPT. 20, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established 1) he was an advanced degree professional or an individual of exceptional ability and 2) that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he meets the requirements of the requested classification and is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

A. Advanced Degree

The Petitioner submitted a transcript which shows that he completed 10 classes in a "Business Administration" course[4] at the [redacted] in Brazil. The transcript also indicated that three courses are "pending completion" and that he is "to attend" four additional courses. In addition, the Petitioner provided an "Evaluation of Education" which clearly indicated that the evaluator's conclusion regarding the Petitioner's equivalence of a U.S. bachelor's degree in business administration was based on a combination of work experience and coursework.

At issue is the fact that the Petitioner does not hold a "a United States baccalaureate degree or a foreign equivalent degree," as required by the regulations at 8 C.F.R. § 204.5(k)(2) and (3)(i)(B). When the analysis of a petitioner's credentials relies on a combination of experience and coursework to obtain equivalence to completion of a U.S. baccalaureate degree, the result is the "equivalent" of a degree rather than a "foreign equivalent degree."[5]

As explained by the Director, there is no provision which would allow the Petitioner to qualify as an advanced degree professional without the foreign equivalent of a U.S. baccalaureate degree. On appeal, the Petitioner relies on a portion of *Matter of Caron International, Inc.*, 19 I&N Dec. 791 (Comm. 1988) which states that "substantial academic coursework in a professional field combined with professional experience may be considered equivalent to a bachelor's degree." However, while some classifications permit such a combination of experience and education to qualify as the equivalent of a U.S. bachelor's degree, as noted above, to qualify as an advanced degree professional, an individual must have the "foreign equivalent degree."

B. Exceptional Ability

The Director determined that the Petitioner met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) and (C). On appeal, the Petitioner asserts that he also meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).[6]

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[2] *See also Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] We are unable to determine whether the "Business Administration" course was part of a degree program.

[5] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a United States baccalaureate or higher degree.") The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

[6] As the Petitioner does not address the remaining criteria, we consider them abandoned. *See Matter of R-A-M-*, 25 I&N

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Petitioner asserts that Director applied a "stricter standard" than that which is required by the criterion. As evidence, the Petitioner relies on his "educational background along with his professional experience and expert letters." The plain language of the regulation, however, does not include "professional experience" or "expert letters" as evidence, but rather requires "an official academic record," such as a transcript. As noted above, the record does not contain any evidence to establish that he received "a degree, diploma, certificate or similar award" from the university where he attended classes.[7]

For the reasons set forth above, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

As the Petitioner has not met the threshold requirement for this classification, further analysis of his eligibility for a national interest waiver would serve no meaningful purpose.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

Dec. 657. 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226. 1228 n. 2 (11th Cir. 2005). citing *United States v. Cunningham,* 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark,* No. 09-CV-2731201 1, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

[7] We would also note that, although the Petitioner submitted a "diploma" for an "English as a Second Language" course, the record does not establish that it is related to his area of exceptional ability as required by the regulation, or that it is an official academic record. Similarly, the Petitioner failed to establish that the "training certificates," "certificates of achievement," and "course certificate" are official academic records.